-

-

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 26669 of 1999

Between:

B.Shankaraiah,

Prop: Sree Lakshmi Kirana and Jaggery Merchant,

Dindi Village & Mandal, Nalgonda District.

..... PETITIONER

AND

1. The Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Nampally, Hyderabad
2. The Deputy Commissioner, Prohibition & Excise, Mahaboobnagar, Mahaboobnagar District.
3. Sri Mohd. Abbas Ali, Assistant Prohibition and Excise Superintendent, Mahaboobnagar, Mahaboobnagar District.
4. The Inspector of Prohibition & Excise, Atchampet, Mahaboobnagar District.
5. The Forest Officer, Atchampet Forest Check Post, Atchampet, Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Certiorari calling for the records relating to or connected with Crime No.137/98-99 on the file of 4th respondent herein and set aside the order of the 1st respondent in Cr.No.211/2537/DPE/99/B2, dt.22.09.1999 and consequently direct the respondents to release 10 tonns of jaggery in favour of the petitioner.

Counsel for the Petitioner: MR.K.DURGA PRASAD

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following :

-

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

-

-

WRIT PETITION NO.26669 OF 1999

-

-

ORDER:

The petitioner claiming to be a Proprietor of Sree Lakshmi Kirana and Jaggery Merchant, Dindi Village, Nalgonda District, files this writ petition *inter alia* seeking to set aside the proceedings in Crime No.137/98-99 on the file of the fourth respondent herein and the orders passed therein on 22-09-1999 and consequently for a direction to release the 10 tonns of jaggery in favour of the petitioner.

2. According to the petitioner, he is in the business of Kirana and jaggery at the village of Dindi, Nalgonda District and holds a licence therefor including for sales tax. The petitioner had placed an order for supply of 10 tonns of jaggery with M/s Nagaraja Traders, Chittoor and the same was loaded on 23-02-1999 in Lorry bearing No. AAT-4957 with necessary bills for transport to the Village. While the said jaggery was being transported, the fifth respondent stopped the Lorry at the Forest Check Post and having found the jaggery, it was handed over to the fourth respondent under a due receipt obtained from him, which was duly signed by Mr. Nagireddy, Prohibition & Excise Constable. However, without verifying the records, a false case has been foisted against the petitioner on the ground that the jaggery was being used for preparation of illicit liquor, and accordingly, seized the vehicle and jaggery. This incident had appeared in the local press. There has been a claim by the Excise Department taking credit for the said alleged seizure. The Driver and the Cleaner of the vehicle were arrested and produced before the Court and the fourth respondent had taken the entire records including the bill and waybill. The petitioner had filed a writ petition in W.P.No.4447 of 1999 for release of jaggery and vehicle, which was ordered by this Court on 30th April, 1999 for release of the vehicle by furnishing bank guarantee and to pass appropriate orders for release of the jaggery by the second respondent within a period of one week. However, no orders have been passed inspite of direction given by this Court. The petitioner has filed an appeal to the Division Bench in Writ Appeal No.770 of 1999, and thereafter *suo motto* Contempt Case was initiated by this Court in C.C.No.882 of 1999. Then the second respondent passed orders on 29-06-1999 confiscating the jaggery in favour of the Government. Subsequently, the writ appeal and the contempt case were also disposed of with a warning. However, to the utter surprise, the third respondent visited the house of the petitioner on 23.04.1999 and ransacked his house and caused damage to the property and took away cash of Rs.20,000/-, in respect of which a complaint has been lodged in F.I.R.No.13/99. However, no action has been taken thereon. In regard to the jaggery, it was stated that in view of the Memo No.25779/PP I.F/A1/95-1, dated 22.6.1998, the Government directed the authorities not to interfere with the business of traders in the matter of purchase and sale of black jaggery and alum. Inspite of the same, the petitioner is being harassed. A batch of cases filed in this Court by the traders in W.P.No.27045 of 1996 and batch were allowed with a direction to the authorities not to interfere with the

business. Inspite of the same, the petitioner's lorry and also the goods were seized as the same were found at Nadimpally village which is totally not correct. The said village is beyond Atchampet Check post and whereas there is no entry in regard to the passing through of the vehicle. Therefore, the entire action is wholly concocted and foisted. Even the appeal filed by the petitioner was not properly taken into consideration and the same was dismissed. Hence, the writ petition.

3. In the counter affidavit filed on behalf of the respondents sworn in by the second respondent which runs into eight pages gives a complete narration of the chequered events leading to the filing of writ petitions and disposal of appeal. It is pointed out that on 24-02-1998 at about 3.00 p.m. the house of Kishanji was raided and it was detected that there exists two running stills and a Lorry bearing No.AAT 4957 parked nearby with 500 lts., of I.D. liquor in 10 rubber tubes, two plastic cans containing 10 lts., of of I.D. liquor, 100 quintals of black jaggery in 200 bags and 10 Kgs Navasagaram. There have been several persons including A-1 to A-3, who were arrested and of them, they confessed about the business. Therefore, the lorry was seized along with other material and the prosecution was launched under provisions of the A.P. Prohibition Act. Subsequently in terms of the orders of this Court in W.P.No.4447 of 1999, the vehicle was released. Though a show cause notice dated 11.05.1999 was given to the petitioner, no explanation was filed by him. In fact, the lorry was found stationed at Check Post and the same was slowly proceeding towards the said village and it was followed by the authorities and ultimately led to the detection of the aforesaid incriminating material. Therefore, it cannot be said that merely because there was no entry in the Check Post, the incident is false. Further, the Government Chemical Examiner of Prohibition and Excise, Hyderabad submitted a report dated 28.04.1999 to the effect that the sample contains a lot of extraneous matter i.e., straw and sand, beyond the prescribed limits and it also contains a good percentage of total reducing sugar which can be converted into Alcohol by fermentation. In view of the said report and also the incriminating circumstances, the material was rightly seized and the appellate authority also did not find favour with the petitioner. Hence, there are no merits.

4. The learned counsel appearing for the petitioner strenuously contended that having regard to the fact that there is no entry of passing through the vehicle in the check post, it cannot be said that the said vehicle was found in a village which is far

beyond the said Check Post and further there was no proper enquiry nor consideration of the various aspects and even the report in fact shows that the jaggery used for human consumption, is kept.

5. The learned Government Pleader appearing on behalf of the respondents sought to sustain the impugned orders on the ground that the entire events and also the material are pointed against the petitioner and hence the orders do not require any interference.

6. Considering the submissions made and on perusal of the material, it is seen that there is no dispute to the fact that the vehicle and the jaggery were seized and a prosecution was launched under the provisions of the A.P. Prohibition Act, 1995. The sole question which centers around for consideration is as to whether the vehicle and the material can be confiscated for the alleged offence under the provisions of the A.P. Prohibition Act, 1995.

7. The main dispute raised on behalf of the petitioner is as to the very factum of seizure. It is pointed out that there is no entry at the check post through which the vehicle has to necessarily pass to reach Nadimpally village. However, there is no serious dispute raised in regard to the prime allegations made against the petitioner in respect of the search made at the house of Kishanji where the aforesaid incriminating material including running stills required are found. Absolutely no explanation is coming forth on behalf of the petitioner therefor. Even as against the show cause notice issued on 11-05-1999, the petitioner has not filed any explanation. Apparently, on perusal of the material, it shows that the theories as submitted on behalf of the petitioner are only sought to be made for the first time in this writ petition and no proper foundation has been laid at any stage before the authorities. It is also curious to note that the petitioner himself is doing business in jaggery and the jaggery in question was found under panchanama at Nadimpally village. On the basis of the other material as found which has been recorded in the panchanama and the report obtained thereafter, both the parties have come to the conclusion that there is ample material to show that the jaggery is being used for manufacture of I.D. liquor. In view of the same, it cannot be said that the entire proceedings as underwent can be doubted. Except making bald allegations, the petitioner has not made out any ground to warrant any interference in respect of the

impugned action. It has to be necessarily held that on the facts and circumstances and especially in view of the incriminating material as found and as evident from the panchanama, the authorities have rightly come to the conclusion holding that the jaggery is being used for manufacture of I.D. liquor. In view of the same, I do not find any merits in the above writ petition.

9. The writ petition is accordingly dismissed. No costs.

_____

B.PRAKASH RAO, J

Date: 17-01-2005.

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY//

SECTION OFFICER.

To

1. The Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Nampally, Hyderabad (with records).
2. The Deputy Commissioner, Prohibition & Excise, Mahaboobnagar,

Mahaboobnagar District.

3. Sri Mohd. Abbas Ali, Assistant Prohibition and Excise Superintendent, Mahaboobnagar, Mahaboobnagar District.

4. The Inspector of Prohibition & Excise, Atchampet, Mahaboobnagar District.

5. The Forest Officer, Atchampet Forest Check Post, Atchampet, Mahaboobnagar District.

6. Two C.Cs. to the G.P. for Prohibition and Excise, High Court Buildings, Hyderabad (OUT).

7. Two C.D. copies.